

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

J&J SPORTS PRODUCTIONS, INC.,

No. C 11-05424 JSW

Plaintiff,

**ORDER DENYING MOTION TO
STRIKE AND DIRECTING
DEFENDANT TO FILE
AMENDED ANSWER**

v.

MICHAEL D. PARAYNO, individually and
d/b/a BERKELEY BIRDLAND JAZZ,

Defendant.

_____ /

This matter is scheduled for a hearing on May 25, 2012, on Plaintiff's Motion to Strike Defendant's Answer. Defendant failed to file a response to the motion, and the Court issued an Order to Show Cause directing Defendant to show cause as to why the motion should not be granted. On March 26, 2012, having considered Defendant's response, the Court discharged the Order to Show Cause, and directed Defendant to file an opposition to the motion to strike by no later than April 16, 2012. Defendant has not complied with that Order. The matter is now ripe for consideration, and the Court finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing scheduled for May 25, 2012, and it DENIES the motion to strike. For reasons set forth in the remainder of this Order, the Court also ORDERS Defendant to file an amended answer by no later than May 31, 2012.

Plaintiff moves to strike Defendant's answer on the ground that it fails to comply with Federal Rule of Civil Procedure 8(b). Pursuant to that rule, when a party responds to a pleading, a party must: "(A) state in short and plain terms its defenses to each claim asserted against it;

1 and (B) admit or deny the allegations asserted against it by an opposing party.” Fed. R. Civ. P.
2 8(b)(1)(A)(B). In addition, if a party denies allegations, the “denial must fairly respond to the
3 substance of the allegations.” Fed. R. Civ. P. 8(b)(2). “A party that intends in good faith to
4 deny all the allegations of a pleading - including the jurisdictional grounds - may do so by a
5 general denial.” Fed. R. Civ. P. 8(b)(3). However, if the party does not intend to deny all
6 allegations, that party “must either specifically deny designated allegations or generally deny all
7 except those specifically admitted.” *Id.* A party also may, in good faith, deny only part of an
8 allegations, but in such a situation “must admit the part that is true and deny the rest.” Fed. R.
9 Civ. P. 8(b)(4). “A party that lacks knowledge or information sufficient to form a belief about
10 the truth of an allegation must so state, and the statement has the effect of a denial.” Fed. R.
11 Civ. P. 8(b)(5).

12 Defendant has denied paragraphs 7, 12 through 17 of Plaintiff’s complaint. Thus, the
13 Court cannot construe his answer has a general denial. He also does not specifically admit the
14 truth of those allegations that he has not denied. It is clear, however, that Defendant intends to
15 deny liability, and the Court must construe the pleadings “so as to do justice.” Fed. R. Civ. P.
16 8(e). In addition, Defendant is proceeding *pro se*, and the Court is required to construe his
17 pleadings liberally. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). That fact does not,
18 however, excuse Defendant from adhering to the rules of procedure. *Id.*

19 Because the Defendant has specifically denied at least some of Plaintiff’s allegations,
20 and because he is proceeding *pro se*, the Court DENIES the motion to strike. However, the
21 Court also places Defendant on notice that “[a]n allegation - other than one related to the
22 amount of damages - is admitted if a responsive pleading is required and the allegation is not
23 denied.” Fed. R. Civ. P. 8(b)(6). Accordingly, the Court ORDERS Defendant to file an
24 amended answer that responds to the remaining allegations in Plaintiff’s complaint by no later
25 than May 31, 2012. If Defendant fails to file an amended answer by that date, the Court shall
26 deem the pleadings at issue, and Defendant shall proceed at his peril that Plaintiff may seek to
27 have any allegations not denied deemed admitted under Rule 8(b)(6).
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1 The Court hereby advises Defendant that a Handbook for Pro Se Litigants, which is
2 available through the Court's website or in the Clerk's office, contains helpful information
3 about proceeding without an attorney. The Court also advises Defendant that he also may wish
4 to seek assistance from the Legal Help Center. Defendant may call the Legal Help Center at
5 415-782-9000, extension 8657, or sign up on the 15th Floor of the Courthouse, Room 2796, for
6 a free appointment with an attorney who may be able to provide basic legal help, but not legal
7 representation.

8 **IT IS SO ORDERED.**

9 Dated: April 24, 2012

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11 JEFFREY S. WHITE
12 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

J&J SPORTS,

Plaintiff,

v.

MICHAEL D. PARAYNO et al,

Defendant.

Case Number: CV11-05424 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 24, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael D. Parayno
1733 Sacramento Street
Berkeley, CA 94702

Dated: April 24, 2012



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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20 Berkeley, CA 94702

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23 By: Jennifer Ottolini, Deputy Clerk
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